IN THE SUPREME COTRT OF THF UNITED STATES

JAMES C. DAVIS, AS DIRECTOR GENERAL OF RAILROADS AND AGENT, UNDER SECTION 206 "TRANSPORTATION ACT 1921"
Petitioner

vs.

A. E. MANRY,
Respondent

BRIEF FOR RESPONDENT ON PETITION FOR CERTIORARI

I.

The term "all cars" as used in the Safety Appliance Acts includes a locomotive and tender taken as an entity.

Johnson v. Southern Pacific Company, 196 U. S. 1.

In order to confine the water in the tender it is necessary to have a top on the tender. The top holds the water in the tender and supports the overflow of coal from the coal pit. Respondent had just walked over this top and was in the act of getting over on the ladder on the rear of the tender when he was thrown off and injured.

The top of the tender is the "roof" within the meaning of Section 2 of the Safety Appliance Act of April 14th, 1910.

II.

The requirements of the Safety Appliance Acts of Congress are not satisfied by equivalents or by anything less than literal compliance with what it prescribes.

St. Joseph & Grand Island Ry. Co. v. Moore, 243 U. S. 311.

Around the top of the tender is a sheet iron flare or flange to keep the coal from shaking off along the right of way when the train is in motion. This flare or flange was not intended to be used as a grab iron and cannot be so used with any degree of safety. It can only be held on to by clamping it between the thumb and fingers.

The term "grab iron" has a definite and well defined meaning in the Safety Appliance law, and this court has held that an iron rod or coupling lever running across the rear of an engine tender just above the coupler which the employee could hold on to while making the coupling was not a compliance with the law requiring grab irons, etc.

St. Joseph & Grand Island Ry. Co. v. Moore, Supra.

III.

The Safety Appliance Acts are to be construed and applied for practical railroad purposes.

Pennell *v.* Philadelphia & Reading Ry. Co. 231 U. S. 675.

Boehmer *v.* Pennsylvania Ry. Co. 252 U. S. 496.

In the Pennell case this court held that an automatic coupler between the locomotive and the tender was not required under the Safety Appliance Acts. It is a well known fact that the coupler between the locomotive and tender is not used or intended to be used in the operation of trains, but is only used when the engine is in the shops for repairs.

In the Boehmer case this court held that the placing of grab irons on diagnol corners of freight cars was a compliance with the statute requiring grab irons on the ends of the cars. The placing of grab irons on diagnol corners is a strict compliance with the law for all practical purposes because there is a grab iron on either side of the coupler regardless of how the cars may be shifted or turned. Under all conditions the employee has a grab iron on the end of the car where he is standing to make the coupling.

IV.

When the Interstate Commerce Commission ordered ladders on all locomotive tenders more than forty-eight inches in height, Section 2 of the Safety Appliance Act of April 14th, 1910, requiring grab irons at or near the top of the ladder,

became mandatory, although the order of the Commission did not prescribe a grab iron at the top of the ladder.

Illinois Central Railroad Company v. Williams
242 U. S. 462.

Under the ruling of the court in the above case the requirement of the Safety Appliance Act of April 14th, 1910, Section 2, providing that cars having ladders shall also be equipped with secure hand holds or grab irons on the roofs at the top of such ladders, was not and could not be suspended by an order of the Interstate Commerce Commission.

In the above case the railroad company contended that Section Three of the Act gave the Interstate Commerce Commission power to suspend the provisions of Section 2. The court held that Section 3 gave to the Interstate Commerce Commission the power and duty of determining the length of time which the carriers should be allowed in which to standardize the safety appliance equipment, and said: "to give this discretion to the commission is the function, and the only function of the proviso of Section 3, and the claim that, by construction, power may be found in it to suspend Section 2, is too forced and unnatural to be seriously considered."

V.

The placing of a grab iron on the top of the tender at or near the top of the ladder would not require a change in the construction of locomotive tenders, or involve any considerable expense.

The ladder comes to within ten or twelve inches of the top of the tender, and around this top is the sheet iron flare or flange set at an angle of about forty-five or sixty degrees. The grab iron could easily be riveted on the top of the tender or on the sheet iron flange at or near the top of the ladder, and this would insure the safety of employees when using the ladder while the train is in motion, or when being put in motion, as was being done in the case at bar, and would for all practical railroad purposes be a compliance with the Safety Appliance Act.

In passing upon the provision of Section 2 of the Safety Appliance Act of April 14th, 1910, with reference to ladders and hand holds this court has said:

> "So far as ladders and hand holds are concerned (they) shall be placed as nearly as possible at a corresponding place on every car so that employees who work always in haste, and often in darkness and storm, may not be betrayed to their injury or death, when they instinctively reach for the only protection which

can avail them when confronted by such a crisis as often arises in their dangerous service."

Illinois Central R. R. Co. v. Williams, Supra p. 466.

Respectfully submitted,

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